ALLIANCE BANK MALAYSIA BHD A

v.

HAPSAH MD NOR & ORS

HIGH COURT MALAYA, KUALA LUMPUR B
LEE SWEE SENG JC
[ORIGINATING SUMMONS NO: S-24-2395-2009]
2 SEPTEMBER 2010

CIVIL PROCEDURE: *Summons for directions - Interpleader summons - Bank - Sale of charged property - Payment out of surplus proceeds thereof - Competing claimants - Whether appropriate and justified for bank to apply for interpleader summons - Rules of the High Court 1980, O. 17 r. 1(1)(a)* C

CIVIL PROCEDURE: *Jurisdiction - Summons for directions - Interpleader summons - Bank - Sale of charged property - Payment out of surplus proceeds to competing Muslim claimants - Injunction by Syariah High Court prohibiting disbursement of monies pending disposal of cases before it - Whether to be given effect to - Rules of the High Court 1980, O. 17 r. 1(1)(a) - Administration of Islamic Law (Federal Territories) Act 1993, s. 46(1)(2)(b)* D E

This was an application by Alliance Bank Malaysia Berhad ('the bank') pursuant to O. 17 r. 1(1)(a), Rules of the High Court 1980 ('RHC'), for an interpleader relief against the first and second respondents as administratrixes to the estate of Abdul Aziz bin Ahmad ('the deceased'), and the third respondent as beneficiary of the estate of the deceased. The facts were that the bank, after auctioning off the charged property of the deceased borrower, sought to refund the surplus of the proceeds of sale to the first and second respondents (also the wife and daughter of the deceased). However, before the bank could undertake the exercise, the third respondent, the younger brother of the deceased, gave notice that the grant of Letters of Administration was flawed, or improperly extracted, for leaving out his and other beneficiaries' names, and that he was staking a share in the surplus fund. This apart, the third respondent had also enclosed a Syariah High Court Order injuncting the first and second respondents from receiving the surplus proceeds for the time being, and ordering that the same be kept with Amanah Raya F G H I

Berhad. Being thus pulled by two competing parties, so to say, the bank had therefore invoked the interpleader provision of the RHC aforesaid and applied for directions from the present court. The first and second respondents, while imploring the learned Judicial Commissioner not to entertain the bank's application, *inter alia* argued that there was no basis for the application, as the third respondent had no *locus standi* to sue the bank in any event.

Held (allowing application and giving appropriate orders):

(1) Following the test laid down in *RHB Bank Bhd v. Comax Sdn Bhd & Anor*, there are genuine competing claims in this case for the bank to take out this interpleader. (para 14)

(2) The requirement of "expects to be sued" in O. 17 r. 1(1) of the RHC has been satisfied by the applicant as, if the applicant does not make this application to court, it can expect to find the first and second respondents, who had already complained to Bank Negara, to follow through with a formal demand in writing from their solicitors and legal action taken. The other requirements of O. 17 r. 3(3)(a),(b) and (c) of the RHC have equally been met, since the applicant had no interest in the subject matter of the dispute with respect to the surplus of the auction proceeds, had not been in collusion with any of the respondents, and is ready and willing to pay the surplus of the auction proceeds into court if so ordered. (paras 9 & 21)

(3) The third respondent too has the *locus standi* to sue the applicant. The third respondent had already put the applicant on notice, and therefore would surely have a cause of action against the applicant should the latter continue to release the surplus of the auction proceeds to the first and second respondents. (para 18)

(4) Whatever is the nature of the dispute with respect to who are the beneficiaries of the estate of the deceased and in what proportion they are entitled to share in the estate of the deceased, that is something that comes within the sole purview of the Syariah High Court. Likewise, in the event of a dispute, any distribution of the estate of a deceased Muslim has to follow the Sijil Faraidh as issued by the Syariah Court. (para 17)

(5) There is here a Syariah Court Order injuncting the first and second respondents from receiving the surplus of the auction proceeds until the two actions in the Syariah Court are disposed of. It is not for this court to question the wisdom of the Syariah Court that gave the order for a matter that comes within its purview. Hence, if the first and second respondents are dissatisfied with the said order, the proper step is for them to apply to set aside or appeal against the same. (para 20)

(6) In the circumstances, the court would order that the surplus of the auction proceeds less charges allowed be paid into a joint-solicitors' account of the solicitors for the first and second respondents and the solicitors of the third respondent within three weeks hereof, and that the same be placed in a fixed deposit until the disposal of all litigation involving the estate of the deceased in both the Syariah as well as the Civil Courts. (para 23)

Case(s) referred to:

Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328 HC ***(refd)***

Peter Yip Shou Shan v. George Kent (Malaysia) Berhad & Anor [2002] 2 CLJ 205 HC ***(refd)***

Re Ex Parte Application Ridzwan Ibrahim (Presumption Of Death) [2002] 4 CLJ 502 HC ***(refd)***

RHB Bank Bhd v. Amalan Tepat Sdn Bhd & Ors [2007] 7 CLJ 379 HC ***(refd)***

RHB Bank Bhd v. Comax Sdn Bhd & Anor [1999] 3 CLJ 552 HC ***(refd)***

Umi Khalsom Mohamed & Anor v. Haliza Hassan & Anor [2009] 9 CLJ 729 HC ***(refd)***

Legislation referred to:

Administration of Islamic Law (Federal Territories) Act 1993, s. 46(1), (2)(b)

Federal Constitution, arts. 121(1A)

National Land Code, s. 268(3)

Rules of the High Court 1980, O. 17 rr. 1(1)(a), 3(3)(a), (b), (c)

For the applicant - Susie Ling Kiong; M/s Yeap, Yong & Amy
For the 1st & 2nd respondents - Rohani Ibrahim; Syed Ibrahim & Co
For the 3rd respondent - Baharuddin Ali; M/s Norfairozal & Co

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Lee Swee Seng JC:

Prologue

[1] Long time ago two women claimed that they were the rightful mother to a baby and so they brought their dispute before King Solomon. Those days a king exercising executive powers was also a judge exercising judicial powers. There was no DNA test available then and so Solomon in the guise of meting out rough justice said he would use his sword to cut the baby into two and would give each one of the mothers a part. One woman said that was a very fair and just decision whereas the other immediately implored that if that was going to be the decision of the wise King, then she rather that the other woman had the baby. The King saw through the deceit and lies of the woman who had poured praises on the King for his wise decision and sentenced her to death. The real mother of the baby was handed the baby and she was overjoyed to receive her baby back and overawed at the impeccable decision of such a wise King.

[2] The current concept for an interpleader summons can perhaps be traced back to the above story. Two parties staging and staking their claims on a piece of property or a sum of money. This is what happened here where the administrators for the estate of a deceased are saying that they are entitled to the proceeds from the auction of a piece of property pursuant to an order for sale taken out by the applicant bank and a younger brother of the deceased also staking his claim to the deceased assets and complaining that the wife of the deceased and the daughter of the deceased as administrators of the estate of the deceased had left out the names of the other beneficiaries from getting their share of the deceased's estate by leaving them out from the list of beneficiaries in the grant of letters of administration. Only two beneficiaries who are also the two administrators are stated in the said grant of letters of administration.

Parties

[3] The deceased Abdul Aziz bin Ahmad died on 19 April 2005 and was the registered owner of a piece of land in Kuala Lumpur. The deceased had charged the land to the applicant bank as

security for an overdraft facility granted to him. An order for sale was obtained on 12 June 2008 for sale of the land by way of public auction because of default by the deceased. The property was successfully auctioned on 16 March 2009 for a purchase price of RM1,525,000. The purchase price duly paid in full by the successful bidder on 12 June 2009 was utilized in accordance with the National Land Code 1965 (NLC) leaving a surplus sum of RM530,956.05 (surplus of auction proceeds). The applicant had filed a Form 16Q with the High Court on 21 October 2009 setting out the statement as to payment due in connection with a sale by public auction.

[4] The 1st and 2nd respondents were jointly appointed as administrators of the estate of the deceased *vide* an order of the High Court for Letters of Administration No: S2-31-824-2005 dated 26 April 2006. They are both the only beneficiaries stated in the Grant of Letters of Administration.

The 3rd respondent is the younger brother of the deceased.

Problem

[5] On 28 May 2009 the applicant's solicitors received a letter from the 3rd respondent's solicitors enclosing an order from the Kuala Lumpur Syariah Court (Application No: 14600-032-0040-2009) dated 14 May 2009 (the Syariah Court Order) which *inter alia* prohibits the 1st and 2nd respondents from receiving the surplus of the auction proceeds or any form of auction proceeds from the applicant in respect of the sale of the land. The above injunction is until the disposal of two cases before the Syariah Court ie, Summons No: 14200-017-0012-2006 and Summons No: 14200-041-0253-2007. The Syariah Court Order stated further that any surplus from the auction proceeds has to be kept with Amanah Raya Berhad.

[6] The service of the Syariah Court Order had resulted in a delay in the refund of the surplus of the auction proceeds to the 1st and 2nd respondent as there are two competing parties claiming the surplus of the auction proceeds.

Prayer

[7] Being pulled by both sides the applicant's solicitors did what any right-minded solicitors would do: they applied for an interpleader summons for an order and/or further directions with

respect to whether it is the 1st and 2nd respondents on the one hand or the 3rd respondent on the other, that should rightly receive the surplus auction proceeds and that alternatively an order for the surplus auction proceeds be paid into court or such other order as may be deemed just and reasonable by the court. The applicant also prayed for cost to be paid by the respondents.

Principle

[8] The applicant had applied for the above interpleader summons pursuant to O. 17 r. 1(1) (a) Rules of the High Court 1980 (RHC) which reads:

> (1) Where:
>
> (a) A person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereon, or
>
> (b) ...
>
> the person under liability as mentioned in sub-paragraph (a) ... may apply to the Court for relief by way of interpleader.

[9] I find that the requirement of 'expects to be sued' has been satisfied as, if the applicant does not make this application to court, it can expect to find the 1st and 2nd defendant, who had already complained to Bank Negara to follow through with a formal demand in writing from their solicitors and legal action taken. The legal action need not have to be filed and served on the applicant already. So long as the applicant has an expectation of a legal action being taken against it is sufficient to meet the requirement of 'expects to be sued.' An expectation of being sued would suffice rather than actually being sued. Waiting for one to be sued might be a long wait sometimes and any delay in bringing an interpleader summons might expose the applicant to a charge of having delayed in the matter and perhaps showing a lack of *bona fide* in the matter or worse still, having an interest in the subject matter or even colluding with one of the claimants.

[10] In *RHB Bank Bhd v. Amalan Tepat Sdn Bhd & Ors* [2007] 7 CLJ 379 at 383 his Lordship Low Hop Bing J (as he then was) said:

In *Tong Lee Co. Pte Ltd v. Koh Chiow Meng & Anor* Mallal's Digests of Malaysian and Singapore Case Law, 4th edn 1998 Reissue para 2426, KS Rajah JC of the Singapore High Court explained that interpleader proceedings are not, in the strictest sense, proceedings against anybody, but it is a proceeding, the object of which is to extricate the claimant, the solicitors in this case, from the embarrassment of being sued, or likely to be sued, by more than one party in respect of the same subject-matter, and also having as its object to put the claimants in a position in which, if they are going to insist upon their claims, they should do so when the application was made.

[11] The applicant having been served with the Syariah Court Order cannot brush the matter aside as knowledge of an order of court of competing jurisdiction may expose one to a contempt action or an action in negligence if one goes ahead and acts contrary to the court order as in paying out the surplus of the auction proceeds to the 1st and 2nd respondents. Part of the complaint levelled against the 1st and the 2nd respondents is that in the list of beneficiaries to the estate of the deceased, only the names of the 1st and 2nd respondents are stated as beneficiaries whereas the other siblings of the deceased including the 3rd respondent had been left out.

[12] The 3rd respondent states that there is a case in Summons No: 14200-017-0012-2006 which is the claim of the 1st respondent for "harta sepencarian" and there is also another case in Summons No: 14200-041-0253-2007 which is the claim by the 3rd respondent for determination of the validity of the 2nd respondent as the legitimate daughter of the deceased. The former summons of the 1st respondent has been dismissed by the Syariah High Court whereas the latter is still afoot.

[13] The 1st and 2nd respondents are conscious of their rights as administrators of the estate of the deceased with respect to a charged property auctioned with surplus from the auction proceeds. Section 268(3) of the National Land Code 1965 already provided that the residue, if any, of the purchase money shall, subject to sub-section (3) of s. 339, be paid to the chargor.

[14] I am more than satisfied that there are genuine competing claims in this case for the applicant bank to take out this interpleader following the test laid down by Zainun Ali J (as she then was) in *RHB Bank Bhd v. Comax Sdn Bhd & Anor* [1999] 3 CLJ 552 where at p. 557 it was observed that:

A The conflict between the claimants must be real in the sense that each claim, if proven, would give a good cause of action against the applicant, so that where the applicant is not under any obligation to one of the claimants, or where he can, without incurring any liability, pay the subject matter of the claim to one of the claimants, he is not entitled to relief (of interpleader).

B

[15] Section 46(1), (2)(b) of the Administration of Islamic Law (Federal Territories) Act 1993 provides:

(1) A Syariah High Court shall have jurisdiction throughout the
C Federal Territories and shall be presided over by a Syariah Judge.

(2) A Syariah High Court shall:

(b) in civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which
D relate to:

…

(iv) the division of, or claims to, *harta sepencarian*; …

(viii) division and inheritance of testate or intestate property;
E

(ix) the determination of the persons entitled to share in the estate of a deceased Muslim or of the shares to which such persons are respectively entitled;

F **[16]** I adopt the approach taken by her Ladyship Heliliah Mohd Yusof J (as she then was) in *Re Ex Parte Application Of Ridzwan Ibrahim (Presumption of Death)* [2002] 4 CLJ 502 where she had followed the dicta of Eusoff Chin J (as he then was) in *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan* [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328 with reference to art. 121(1A) of
G the Federal Constitution where his Lordship observed:

However, Article 121(1A) states that the High Courts and inferior courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts …

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The Federal Constitution, Ninth Schedule List II-State List, specifically gives powers to the State legislatures to constitute Muslim courts and when constituted, 'shall have jurisdiction only over persons professing the Muslim religion and in respect only any of the matter included I this paragraph'.

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> Therefore, a Syariah Court derives its jurisdiction under a state law, for Federal Territories-Act of Parliament) over any matter specified in the State List under the Ninth Schedule of the Federal Constitution.

[17] Whatever is the nature of the dispute with respect to who are the beneficiaries of the estate of the deceased and in what proportion they are entitled to share in the estate of the deceased is something within the sole purview of the Syariah High Court and any distribution of the estate of a deceased Muslim has to follow the Sijil Faraidh issued by the Syariah Court in the event of a dispute.

[18] It was contended that the 3rd respondent has no locus to sue the applicant but I am unable to agree. Surely if the 3rd respondent had already put the applicant on notice and should the applicant bank still continue to release the surplus of the auction proceeds to the 1st and 2nd respondent the 3rd respondent would surely have a cause of action against the applicant.

[19] In *Umi Khalsom Mohamed & Anor v. Haliza Hassan & Anor* [2009] 9 CLJ 729, Mohamed Apandi Ali J (as he then was) observed that:

> ... The plaintiff's rights to the shares was lawfully given by a court with competent jurisdiction under s. 46(2)(b)(iv) of the Administration of Islamic Law (Federal Territories) Act 1993. The defendant could not question the validity of the Syariah Court's Order.

[20] Here there is a Syariah Court Order injuncting the 1st and 2nd respondents from receiving the surplus of the auction proceeds until the two actions in the Syariah Court are disposed of. It is not for this court to question the wisdom of the Syariah Court that gave the order for a matter that comes within its purview. If the 1st and 2nd respondents are dissatisfied with the said order, they can always apply to set aside the injunctive order or to appeal against the order given as they may be advised by their Syariah lawyers.

[21] I am also satisfied that the other requirements in O. 17 r. 3(3)(a)(b) and (c) of the RHC have been met in that:

A (a) the applicant has no interest in the subject-matter of the dispute with respect to the surplus of the auction proceeds;

(b) the applicant is not in collusion with any of the respondents to this action and

B (c) the applicant is ready and willing to pay the surplus of the auction proceeds into court if so ordered.

[22] On the issue of costs my attention was drawn to the case of *Peter Yip Shou Shan v. George Kent (Malaysia) Berhad & Anor* C [2002] 2 CLJ 205 at p. 208 where Abdul Aziz Mohamad J (as he then was) gave this guidance:

> An applicant for relief by way of an interpleader, in a proper application, should, in principle, not be liable to pay costs but should instead be paid costs by either of the claimants, because it D is their conflicting claims that have compelled him to seek relief. The claimant liable to pay costs of the applicant should be the claimant who fails in the claim and who should also bear the costs of the successful claimant.

E **Pronouncement**

[23] After a careful consideration of the conflicting claims of the claimants and the conundrum faced by the applicant bank, I made an order that the surplus of the auction proceeds less charges allowed under the National Land Code 1965 be paid into a joint- F solicitors' account of the solicitors for the 1st and 2nd respondent and of the solicitors for the 3rd respondent within three weeks from the order and that the same be placed in fixed deposit until the disposal of all litigation involving the estate of the deceased in both the Syariah as well as the civil courts. I also order that the G sum of RM1,000 as costs be paid from the estate of the deceased to the applicant.

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